

Remarks

The Examiner objected to the drawings as failing to show every feature of the invention specified in the claims. Applicant amended the specification and figures to overcome the objections. Claims 10-12 and 17 were also canceled to overcome these objections.

The Examiner rejected claims 1, 2, 6-8, and 13-15 as being anticipated under 35 USC § 102 by U.S. Patent No. 1,852,883 to Gustaveson ("Gustaveson"). Because Gustaveson does not disclose all elements of Applicant's claims, the rejections with respect to Gustaveson should be withdrawn under 35 USC § 102.

All claims require an outsole be combined with an upper to provide a single unit. Moreover, the outsole is required to have a plurality of notches in a top surface of the outsole.

Gustaveson clearly teaches an upper and outsole being two separate units and, therefore, cannot disclose Applicant's upper and outsole being combined together to provide a single unit. In addition, Gustaveson's outsole does not have any notches in the top surface. Gustaveson teaches a separate tread member being placed on top of the top surface of the outsole and it is this tread member that includes the notches.

Since Gustaveson teaches away from an upper and outsole being combined to provide a single unit and a plurality of notches in the top surface of the outsole, as required in all of Applicant's claims, the rejections under 35 USC § 102 with respect to Gustaveson should be withdrawn.

The Examiner rejected claims 3-5, 16 and 18-19 as being unpatentable under 35 USC § 103 over Gustaveson in view of U.S. Patent No. 4, 888,887 to Solow ("Solow"). It appears Solow is being relied upon to show Applicant's claimed through hole and filter on the side of the outsole. Gustaveson is relied upon to show the remaining claimed elements.

Claim 18, the only independent claim rejected by the combination of Gustaveson and Solow, requires an outsole combined with an upper to provide a single unit, a plurality of notches in a top surface of the outsole, and a plurality of channels in a bottom surface or a side surface of a footbed being in communication with the plurality of notches.

As described above, Gustaveson teaches away from these two elements of Applicant's claims, including claim 18. Therefore, even if Solow did show a through hole and filter on the side of the outsole, and Applicant is not making such a concession, the combination of Gustaveson and Solow still would not arrive at Applicant's claimed invention.

Since Solow also clearly teaches an upper and outsole being two separate units, there is no teaching or suggestion in either reference to show an upper and outsole being combined to provide a single unit. In addition to this argument, Solow does not teach or suggest a plurality of notches in a top surface of the outsole, similar to Gustaveson, and Solow does not teach or suggest a plurality of channels in a bottom or side surface of a footbed being in communication with the plurality of notches.

Because neither reference teaches or suggests an upper and outsole combined to provide a single unit or a plurality of notches in a top surface of the outsole being in communication with a plurality of channels in a bottom surface of a footbed, the combi-

nation of Gustaveson and Solow also does not arrive at Applicant's claimed invention absent some modification to the references.

In order for a modification of references to be properly made in a rejection under 35 USC § 103, there must be some teaching or suggestion in either reference to provide one skilled in the art with the motivation to make the suggested modification. Absent such motivation, such modification would be improper. Hence, since both Gustaveson and Solow teach away from an upper and outsole being combined to provide a single unit, there can hardly be any motivation to provide the opposite teaching of a an upper and outsole combined together to provide a single unit. Moreover, without any teaching or suggestion in either reference to have a with a plurality of notches in a top surface of an outsole be in communication with a plurality of channels in a bottom surface of a footbed, there is no motivation to provide this limitation.

Based on the foregoing, the rejections under 35 USC § 103 with respect to Gustaveson and Solow should be withdrawn and the claims should be in condition for allowance.

Respectfully submitted,



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